

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

MICHAEL KOKOSKI,

Petitioner,

v.

CIVIL ACTION NO. 2:12-cv-01649

STEPHEN C. TUCKER,

Respondent.

ORDER

Pending before the court is petitioner Michael Kokoski's Petition for Writ of Habeas Corpus [Docket 1]. This Motion was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission of proposed findings of fact and recommendations for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). When a Magistrate Judge issues a recommendation on a dispositive matter, the court reviews *de novo* those portions of the Magistrate Judge's report to which specific objections are filed. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

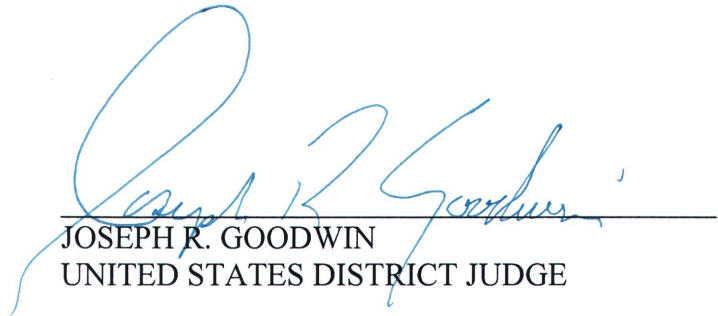
Judge Stanley issued Proposed Findings and Recommendations [Docket 4] in October, 2012, and no objections have since been filed. Accordingly, the court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge. The petitioner's Petition is **DENIED as moot**. This case is **DISMISSED** and **STRICKEN** from the active docket.

The court doubts whether it is necessary to rule on the issuance of a certificate of appealability in this case, but out of an abundance of caution will do so. In order for a certificate of appealability to issue, the applicant must make a "substantial showing of the denial of a

constitutional right.” 28 U.S.C. § 2253(c)(2). When dismissal is based on procedure, the petitioner must show “that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The findings and recommendation of the Magistrate Judge clearly found that the petitioner’s § 2241 motion is moot based on his release from custody. The standard for issuance of a certificate of appealability has not been met, and accordingly, the petitioner is **DENIED** a certificate of appealability.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party. The court further **DIRECTS** the Clerk to send a copy of this Order to petitioner Michael Kokoski at his last known address: 2584 Lemon Road, Honolulu, HI 96815.

ENTER: August 5, 2013



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE